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# Acquisition Hour: Service Contracts with Federal Agencies

November 29 | Noon - 1:00 pm

Presented by:

Carol Murphy, WPI



# Webinar Etiquette

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§ Place your phone or computer on MUTE

§ Use the QUESTIONS option to ask your question(s).

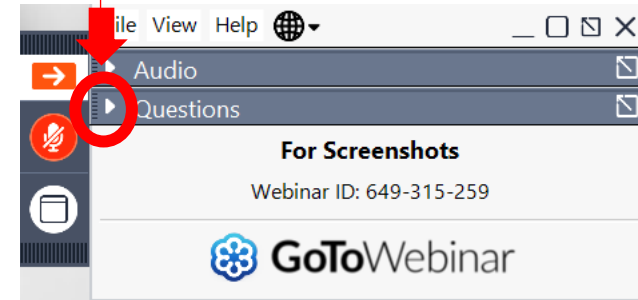
§ We will share the questions with our guest speaker who will respond to the group

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The APEX Accelerators program, under management of the Department of Defense (DOD) Office of Small Business Programs (OSBP), plays a critical role in the Department's efforts to identify and engage with a wide range of businesses entering and participating in the defense supply-chain. The program provides the education and training that all businesses need to participate to become capable of participating in DOD and other government contracts.

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§ *Juneau County Economic Development Corporation (JCEDC)*

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§ *Envision Greater Fond du Lac*

## § GREEN BAY

§ *NWTC Startup Hub*

## § LACROSSE

§ *Veterans in Professions*

## § MANITOWOC

§ *Progress Lakeshore*

## § OSHKOSH

§ *Greater Oshkosh Economic Development Corporation*

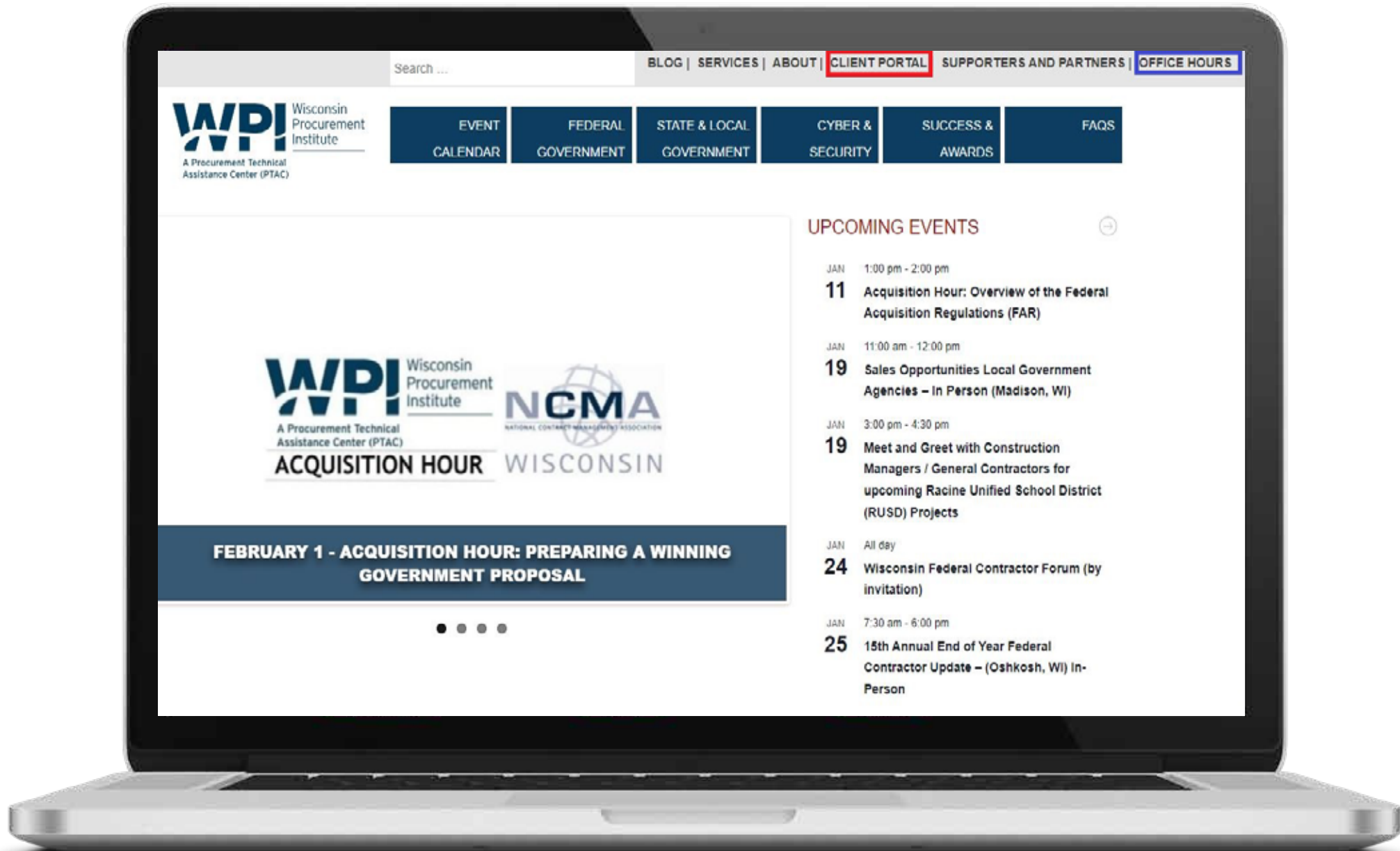
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**FEBRUARY 1 - ACQUISITION HOUR: PREPARING A WINNING GOVERNMENT PROPOSAL**



### UPCOMING EVENTS

- JAN 1:00 pm - 2:00 pm  
**11 Acquisition Hour: Overview of the Federal Acquisition Regulations (FAR)**
- JAN 11:00 am - 12:00 pm  
**19 Sales Opportunities Local Government Agencies – In Person (Madison, WI)**
- JAN 3:00 pm - 4:30 pm  
**19 Meet and Greet with Construction Managers / General Contractors for upcoming Racine Unified School District (RUSD) Projects**
- JAN All day  
**24 Wisconsin Federal Contractor Forum (by invitation)**
- JAN 7:30 am - 6:00 pm  
**25 15th Annual End of Year Federal Contractor Update – (Oshkosh, WI) In-Person**

# WHAT WE WILL COVER TODAY

- General Information
- Performance Based Acquisitions
- Statement of Work
- Service Contract Labor Standards Act
- Department of Labor (DOL) Wage Determinations

# GENERAL INFORMATION

# SERVICE CONTRACT DEFINITION

A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply

- Nonpersonal or personal contract
- By professional or nonprofessional personnel
- Individual or organizational basis
- May not exceed 5 years
- Prime contractor held responsible for subcontractor

# EXAMPLES

- Transportation
- Janitorial
- Catering – Food Service
- Advisory and Assistance Services
- Training
- Window Washing
- Repair – Maintenance Services
- Architect - Engineering
- Research and Development

# NONPERSONAL OR PERSONAL

## Nonpersonal

- Personnel rendering the services are not subject to Government supervision and control that is prevailing in relationships between the Government and its employees

## Personal

- Contractor personnel are subject to the supervision of and control of a government officer or employee with an employer-employee relationship
- Agencies must have specific authorization by statute to award personal service contracts

# PERSONAL SERVICES ASSESSMENT

Elements to consider whether a contract is personal in nature:

- Performance on site
- Principal tools and equipment furnished by the Government
- Services apply directly to the integral effort of agencies assigned function or mission
- Comparable services are performed in the same or similar agencies using civil service employees
- Service is expected to last beyond 1 year
- Inherent nature of service reasonably requires direct or indirect Government direction or supervision in order to protect the Government's interest and retain control of the function involved

# HOW SERVICE CONTRACTS ARE AWARDED

- Competition is required
- Method of contracting used may vary with type of service being acquired and government's cost estimate
- May consider price, technical capability, and past performance
- Cost technical trade off is allowed

# TEMPORARY HELP

- Government may award contracts for the brief or intermittent use of the skills of private sector temporaries
- Are not regarded as personal services
- Should not be used in lieu of regular recruitment or displace a Federal employee

# OTHER TYPES OF SERVICE CONTRACTS

## Advisory and Assistance Services

- Used to obtain outside points of view on critical issues; advice on developments in industry; university, or foundation research; opinions, special knowledge, or skills of noted experts; enhance understanding and developing alternative solutions to complex issues
- Does not include IT services, architect/engineering services, or research services

## Dismantling, Demolition or Removal of Improvements

- Solely for dismantling, demolition, or removal of improvements
- If further construction, alteration or repair will result then subject to Davis-Bacon Act instead

# OTHER TYPES OF SERVICE CONTRACTS

## Nonpersonal Health Care Services

- Includes physicians, dentists, and other health care providers
- Independent contractor retains control over medical and professional aspects of services provided
- Requires medical liability insurance

# PERFORMANCE BASED ACQUISITIONS

# PERFORMANCE BASED CONTRACTING

- Contract that defines what is to be achieved not how it is done
- Preferred method for acquiring services
- To be used to the maximum extent practicable
- Includes measurable performance standards and the method of accessing contractor performance

# COMMERCIAL ITEM SERVICES

- Services offered and sold competitively in the commercial marketplace based on established catalog or market prices
- Examples include:
  - Installation services
  - Maintenance services
  - Repair services
  - Training services
- Does not include services sold based on hourly rates without an established catalog or market price

# STATEMENT OF WORK

# DESCRIBING GOVERNMENT'S NEEDS

Performance Based Acquisitions generally use one of two ways to describe the Government's needs:

- Performance Work Statement (PWS)
- Statement of Objectives (SOO)

# PERFORMANCE WORK STATEMENT (PWS)

- May provide introduction, background information and scope
- Captures conclusions arrived at during the needs assessment process such as job analysis, performance objectives, performance standards
- Identifies requirement in clear, specific and objective terms
- Three key elements
  - Statement of required services in terms of output
  - Measurable performance standard for the output
  - Acceptable quality level or error rate
- Specifies standard of performance and quality level government expects

# STATEMENT OF OBJECTIVES (SOO)

- Identifies the broad, basic, top-level objectives of a task or program in the procurement
- Used as a focusing tool for both the Government and offeror
- Allows for a wider range of solutions for the Government to consider
- Contractor's proposals shall contain their statements of works and performance metrics and measures based on their proposed solutions

# SERVICE CONTRACT LABOR STANDARDS ACT

# GENERAL RULES

- Applies to every service contract in excess of \$2,500 performed in US
- Specifies minimum wages and fringe benefits contractors must pay employees working on the contract
- Specifies safety and health standards contractors must provide for sanitary work conditions
- Specifies certain records contractors must maintain
- If former contractor had a collective bargaining agreement, new contractor must pay wages as outlined in the agreement

# ADDITIONAL RULES

- Contractors must pay minimum wage under Executive Order 14026
  - \$16.20 – January 1, 2023
  - \$17.20 – January 1, 2024
- Paid sick leave – under Executive Order 13706 employees must earn 1 hour of paid sick leave for every 30 hours worked up to 56 hours of paid sick leave each year
  - Used for own illness or family member illness plus other situations

# STATUTORY AND SECRETARY OF LABOR EXEMPTIONS

Service Contract Labor Standards Act does not apply to:

- Construction, alteration, or repair of public buildings including painting and decorating
- Supply or Material contracts
- Freight or personnel transportation by vessel, aircraft, bus, truck, railroad where published tariff rates are in effect
- Radio, telephone or cable companies subject to the Communications Act

(Continued)

# STATUTORY AND SECRETARY OF LABOR EXEMPTIONS – CONTINUED

- Public Utility Services
- Employment contract for direct services by an individual or individuals
- Operation of postal contract stations for US Postal Service and common carriers of mail by rail, air, bus, and ocean vessel where on established routes and insubstantial portion of their revenue
- Individual owner-operator for mail service with no employees

# ADDITIONAL EXEMPTIONS

Maintenance, calibration or repair of equipment provided at established catalog or market prices and contractor uses same compensation plan for all employees

- Automated data processing equipment and office information/word processing systems
- Scientific equipment and medical apparatus if application of micro-electronic circuitry is an essential element
- Office/business machines not otherwise exempt if services are performed by manufacturer or supplier of equipment

# ADDITIONAL EXEMPTIONS

- Automobile or other vehicle maintenance services
- Financial services for credit and debit cards
- Hotel/motel services for conferences including lodging and/or meals
- Maintenance, calibration, repair, and/or installation of all types of equipment where manufacturer or supplier provides services under a sole source basis
- Common carrier transportation of persons
- Real estate services
- Relocation services – not including actual moving or storage of household goods

# PROFESSIONAL EMPLOYEE COMPENSATION

Service Contract Labor Standards was enacted to ensure contractors compensate blue-collar service workers and some white-collar service workers fairly, but does not cover professional employees such as

Accountants, actuaries, architects, dentists, engineers, lawyers, doctors, nurses, pharmacists, biologists, chemists, or teachers

To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties

# NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

Executive Order 14055, signed November 18, 2021 – proposed rule issued July 15, 2022

Proposed rule includes:

Employees under current contract have a right of first refusal of employment under new contract in positions for which they are qualified

Does not apply to contracts under simplified acquisition threshold (SAT), contracts employing severely handicapped, vending facilities, and where employees are working for both government and non-government contracts

# ADDITIONAL LABOR LAWS

Some include

- Equal Opportunity
- Equal Opportunity for Veterans
- Employment of Workers with Disabilities
- Employment Eligibility Verification

# POSTERS

There are a number of posters that contractors may be required to post for service contracts. Some common ones include

- WH1313 Employee Rights on Government Contracts
  - Wage Determination is posted as an attachment
- WH1090 Worker Rights under Executive Order 13706
- WH1091 Worker Rights under Executive Order 14026
- WH1088 Employee Rights under the Fair Labor Standards Act
- OSHA Job Safety and Health It's the Law!
- Employee Rights under the National Labor Relations Act
- Know Your Rights Workplace Discrimination is Illegal
- Pay Transparency Nondiscrimination Provision

# DOL WAGE DETERMINATIONS

# WAGE DETERMINATIONS

- A listing of wage rates and fringe benefit rates for each labor category of workers which US Department of Labor has determined to be prevailing in a given area
- Wage Determinations are currently located at SAM.gov <https://SAM.gov/>
- Odd and Even Wage Determinations
  - Odd – requires health and welfare payment “per employee” for all hours compensated (including paid time off, but excluding overtime hours) available in SAM
  - Even – requires health and welfare payment by “average cost” for all hours worked by service employees (including overtime hours, but excluding paid time off) available through Department of Labor E98 process

# INFORMATION ON WAGE DETERMINATIONS

- Wage Determination Number, Revision Number, Date
- State and Counties covered (Milwaukee, Ozaukee, Washington, and Waukesha are on same wage determination)
- 5 digit occupational code – job description and wage rate
- Paid sick leave requirement
- Health and Welfare benefit – includes life, accident, and health insurance, sick leave over minimum requirement, pension plans, personal leave
- Vacation pay requirements and 11 paid Holidays
- Hazardous pay, uniform allowance
- Computer employees, air traffic controllers and weather observers

# ADDITIONAL INFORMATION

- If contract term is more than 1 year, wages are to be adjusted after 1 year and not less often than once every 2 years
- Maintain records for a minimum of 3 years, note claims can be filed up to 6 years after contract final payment
- Apprentices and student-learners may be employed at wages lower than the minimum wages in the wage determination – understand all requirements involved
- County where work is to be performed determines what wage determination is applicable

# CONTRACT OPTION PERIODS

- For option periods, contract adjustments can be made if the revised Wage Determination rates are higher than the contractor is currently paying. Contractor will submit documentation to the contracting officer with the request for contract modification

# SAMPLE WAGE DETERMINATION

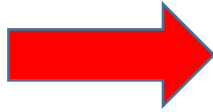
REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON D.C. 20210

Daniel W. Simms                      Division of  
Director                                      Wage Determinations

Wage Determination No : 2015-4899  
Revision No : 22  
Date Of Last Revision : 06/30/2023

Note: Contracts subject to the Service Contract Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.



If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:

Executive Order 14026 generally applies to the contract.  
The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.



If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:

Executive Order 13658 generally applies to the contract.  
The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.

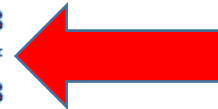
The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the Executive Orders is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

State: Wisconsin

Area: Wisconsin Counties of Milwaukee, Ozaukee, Washington, Waukesha

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		17.96
01012 - Accounting Clerk II		20.16
01013 - Accounting Clerk III		22.55
01020 - Administrative Assistant		30.71
01035 - Court Reporter		24.84
01041 - Customer Service Representative I		16.55
01042 - Customer Service Representative II		18.06
01043 - Customer Service Representative III		20.28
01051 - Data Entry Operator I		15.10***
01052 - Data Entry Operator II		16.48
01060 - Dispatcher, Motor Vehicle		22.64
01070 - Document Preparation Clerk		18.43
01090 - Duplicating Machine Operator		18.43
01111 - General Clerk I		15.05***
01112 - General Clerk II		16.42
01113 - General Clerk III		18.44
01120 - Housing Referral Assistant		23.55
01141 - Messenger Courier		14.31***
01191 - Order Clerk I		17.86
01192 - Order Clerk II		19.49
01261 - Personnel Assistant (Employment) I		18.06
01262 - Personnel Assistant (Employment) II		20.20



\*\*\*Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20 per hour) or 13658 (\$12.15 per hour). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 and 13658 are not currently being enforced as to contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands.

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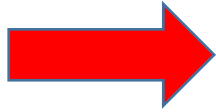
Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors, applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is the victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.98 per hour, up to 40 hours per week, or \$199.20 per week or \$863.20 per month

HEALTH & WELFARE EO 13706: \$4.57 per hour, up to 40 hours per week, or \$182.80 per week, or \$792.13 per month\*

\*This rate is to be used only when compensating employees for performance on an SCA-covered contract also covered by EO 13706, Establishing Paid Sick Leave for Federal Contractors. A contractor may not receive credit toward its SCA obligations for any paid sick leave provided pursuant to EO 13706.



VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor, 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)



HOLIDAYS: A minimum of eleven paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: This wage determination does not apply to any individual employed in a bona fide executive, administrative, or professional capacity, as defined in 29 C.F.R. Part 541. (See 41 C.F.R. 6701(3)). Because most Computer Systems Analysts and Computer Programmers who are paid at least \$27.63 per hour (or at least \$684 per week if paid on a salary or fee basis) likely qualify as exempt computer professionals under 29 U.S.C. 213(a)(1) and 29 U.S.C. 213(a)(17), this wage determination may not include wage rates for all occupations within those job families. In such instances, a conformance will be necessary if there are nonexempt employees in these job families working on the contract.

Job titles vary widely and change quickly in the computer industry, and are not determinative of whether an employee is an exempt computer professional. To be exempt, computer employees who satisfy the compensation requirements must also have a primary duty that consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

Any computer employee who meets the applicable compensation requirements and the above duties test qualifies as an exempt computer professional under both section 13(a)(1) and section 13(a)(17) of the Fair Labor Standards Act. (Field Assistance Bulletin No. 2006-3 (Dec. 14, 2006)). Accordingly, this wage determination will not apply to any exempt computer employee regardless of which of these two exemptions is utilized.

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

**\*\* HAZARDOUS PAY DIFFERENTIAL \*\***

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

# ADDITIONAL INFORMATION

# CONTRACT REQUIREMENTS

- Can you meet all contract requirements outlined in solicitation document?
- Can you ramp up with required staff, equipment, and supplies by official start date?
- How much time do you have to take over from incumbent?
- Is there a phase in phase out time outlined?
- What happens if during the contract you are unable to meet government's requirements?

# PRICING SERVICE CONTRACTS

- Review bid schedule – how do they want you to price the services
- If it is by the job determine how long it will take
- Factor in wage determination requirements including fringe benefits
- Consider and factor in worse case scenarios
- Include indirect costs
- Include profit – do not bid if you cannot make money on the contract
- Determine how you are going to price option years

# PAYMENTS

How will you be paid?

- Routine services are usually paid monthly in arrears
- A one-time job is usually paid in arrears at the end of the completed job
  - Can you wait until the job is complete for payment?
  - What if the job takes 5 months?
  - Are there milestones that may trigger a partial payment for services provided?
- Can you cover start up costs?

# RESOURCES

# RESOURCES

FAR - Acquisition.Gov

<https://www.acquisition.gov/>

SAM.Gov

[SAM.gov | Home](https://sam.gov)

Wisconsin Procurement Institute - Phone: 414-270-3600

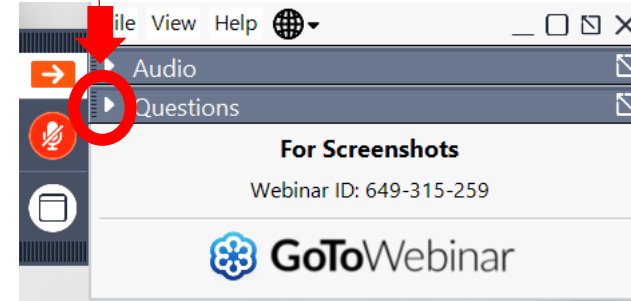
[www.wispro.org](http://www.wispro.org)

# QUESTIONS?



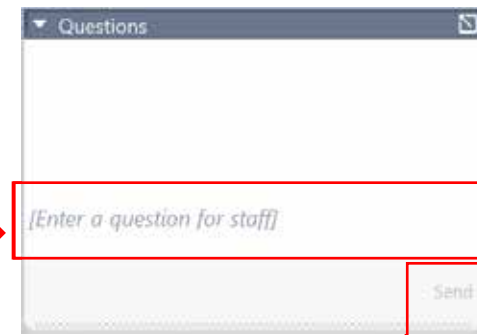
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Click Send when ready to submit a question

# UPCOMING TRAINING - EVENTS

# ACQUISITION HOUR LIVE WEBINAR SERIES

- November 29  
**Service Contracts with Federal Agencies**
- December 12  
**The HUBZone Program – Certification Benefits and Regulations**
- December 13  
**Analyzing and Responding to Federal Construction Solicitations**
- January 10  
**Mastering Federal Construction Contract Performance**

**...More information and registrations at [wispro.org/events](https://wispro.org/events)**

# GOVERNMENT CERTIFICATION WORKSHOPS

- ~~October 12~~  
~~Federal Certifications~~
- ~~October 26~~  
~~Local Certifications~~
- November 30  
**State Certifications**



MATC Goodman-South Campus  
2429 Perry Street, Madison, WI 53713

**...More information and registrations at [wispro.org/events](https://wispro.org/events)**

*Registration Now Open*



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# December 5-7, 2023

*[MarketplaceWisconsin.com](https://MarketplaceWisconsin.com)*

November 29, 2023

*Registration Now Open*



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# Announcing 2024 Evening FAR Sessions

*January 30 – March 19*

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*[Wispro.org/Events](https://wispro.org/events)*

# SURVEY



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